

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

JOSEPH P. RUDOLPH

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Criminal No. 06-001
Electronically Filed

Further Opinion Regarding Rulings (Document No. 65) on Motions in Limine

The Court's Rulings of May 2, 2006, inter alia, sustained the government's objections to the proffer on defense expert witness Jonathon Vipond's opinion regarding the definition of "patient" under the Rule 340B program and as to what establishes a "patient relationship." The Court's reasoning was stated as follows:

Informing the jury about the definitions of the terms relevant and necessary to the offense charged in this case is for the Court, and to that end, the Court will consider a supplemental jury instruction of "patient" (preferably a joint jury instruction; if not, the Court will consider the parties' competing instructions on this definition). Deciding what establishes a "patient relationship" is an ultimate issue for the jury to decide.

Rulings, May 2, 2006 (document no. 65), at 2.

As to Mr. Vipond's opinion regarding what constitutes a "patient relationship," while he is, as an expert witness, permitted to express an opinion which "embraces an ultimate issue to be decided by the trier of fact," Fed.R.Evid. 704(a), the Court deems it inappropriate for the expert to "instruct" the jury on the definitions of terms that the jury must apply to the facts, and will consider a supplemental jury instruction of "patient relationship" (preferably a joint jury instruction; if not, the Court will consider the parties' competing instructions on this definition).

If the parties wish to submit supplemental instructions on the definitions of “patient” and “patient relationships,” consistent with this Court’s rulings on the scope of Mr. Vipond’s opinion testimony, such supplemental instructions shall be submitted and filed with the Court on or before May 4, 2006, at noon.

SO ORDERED this 2nd day of May, 2006.

s/Arthur J. Schwab

Arthur J. Schwab
United States District Judge

cc: All counsel of record

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